

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

GERALD G. SCOTT,

Petitioner,

v.

HAROLD MAY,

Respondent.

:

Case No. 2:23-cv-2790

Chief Judge Sarah D. Morrison

Magistrate Judge Chelsey M.

Vascura

:

ORDER

Petitioner Gerald Scott filed his Petition for Writ of Habeas Corpus in July 2023, arguing that he was deprived of his state and federal constitutional rights to effective assistance of counsel when appointed counsel in his underlying criminal case failed to file an affidavit of indigency prior to sentencing to waive the mandatory \$10,000 fine. (ECF No. 1.)

Mr. Scott first raised this issue to the Ohio Court of Appeals in 2021 on direct appeal of his conviction. (R&R, ECF No. 12.) The Ohio Court of Appeals affirmed the judgment of the trial court. (*Id.*) Mr. Scott waited six months before appealing to the Ohio Supreme Court. (*Id.*) The Ohio Supreme Court denied Mr. Scott's motion for leave to file a delayed appeal and never reached Mr. Scott's arguments. (*Id.*)

Here, the Magistrate Judge recommended that the Court deny Mr. Scott's Petition with prejudice because he procedurally defaulted by failing to file a timely appeal with the Ohio Supreme Court and consequently waived his ground for relief. Further, Mr. Scott demonstrated neither cause for the default of his claims nor that

failure to consider the defaulted claims would result in a fundamental miscarriage of justice.

A day before objections to the Magistrate Judge's Report were due, Mr. Scott instead filed a Notice of Appeal, which nonetheless contested the substance of the Magistrate Judge's recommendations. (ECF No. 13.) In the Notice, Mr. Scott argues that his transfer between prisons caused his default, that his trial was "infect[ed] . . . with constitutional error," and that it should have been obvious, given that he could not afford his own attorney, that he also could not afford a \$10,000 fine. (*Id.*)

The Sixth Circuit denied Mr. Scott's improper appeal, and this matter is now ripe for consideration. The Court construes Mr. Scott's Notice of Appeal as an Objection to the Magistrate Judge's Report and Recommendation. In the Objection, Mr. Scott does not explain how a transfer between prisons resulted in a six-month delay in appealing to the Ohio Supreme Court and he does not show how failure to consider his claims would result in a fundamental miscarriage of justice.

The Report and Recommendation is **ADOPTED** and **AFFIRMED**. Mr. Scott's Petition is **DENIED WITH PREJUDICE**. With respect to any application to proceed on appeal *in forma pauperis*, the Court **CERTIFIES** pursuant to 28 U.S.C. § 1915(a)(3), that an appeal of this Order will not be taken in good faith. The pending Motion for Leave to Appeal *in forma pauperis* (ECF No. 14) is **DENIED AS MOOT**. The Clerk is **DIRECTED** to **TERMINATE** this case from the docket.

IT IS SO ORDERED.

/s/ Sarah D. Morrison
SARAH D. MORRISON, CHIEF JUDGE
UNITED STATES DISTRICT COURT